

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Forty-Ninth Report to the Court, recommending adoption of proposed new Rules 16-110 and 17-109 and amendments to Rules 1-101, 2-124, 2-327, 2-522, 2-551, 2-601, 3-124, 3-326, 3-522, 4-252, 4-331, 4-345, 4-347, 4-407, 9-205, 10-205, 12-208, 15-311, 16-608, 16-757, 16-811, 17-102, 17-103, 17-104, and 17-105 and Form 4-217.1 of the Maryland Rules of Procedure; Rules 4.2, 4.4, and 6.1 in Appendix: Maryland Lawyers' Rules of Professional Conduct; and Rules 12 and 13 of the Rules Governing Admission to the Bar of Maryland, all as set forth in that Report published in the *Maryland Register*, Vol. 28, Issue 9, pages 856 - 881 (May 4, 2001); and

This Court, by Rules Order filed November 1, 2001, having adopted, with certain additions and deletions made on the Court's own motion, the Rules changes proposed in the One Hundred Forty-Ninth Report, except proposed new Rule 16-110, the proposed

amendments to Rules 2-124, 3-124, and 16-811, and the proposed amendments to Rule 6.1 in Appendix: Maryland Lawyers' Rules of Professional Conduct, all of which were deferred for further consideration by the Court, and

This Court having considered at open meetings, notices of which were posted as prescribed by law, all those proposed rules changes, together with the comments received, and making certain amendments to the proposed rules changes on its own motion, it is this 9th day of April, 2002,

ORDERED, by the Court of Appeals of Maryland, that new Rules 16-901, 16-902, and 16-903 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rules 2-124, 2-510, 3-124, 3-510, and 4-266 and Rule 6.1 in Appendix: Maryland Lawyers' Rules of Professional Conduct be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that proposed new Rule 16-110 and the proposed amendments to Rule 16-811 be, and they are hereby, rejected; and it is further

ORDERED that the rules changes hereby adopted by this Court shall take effect July 1, 2002 and shall govern the conduct of attorneys from and after that date and govern the courts of this State and all parties and their attorneys in all actions and proceedings commenced on or after that date, and insofar as practicable to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

* John C. Eldridge

* Irma S. Raker

* Alan M. Wilner

/s/ Dale R. Cathell

Dale R. Cathell

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

* Judges Eldridge, Raker and Wilner declined to sign the Order. See attached dissenting opinion.

Filed: April 9, 2002

/s/ Alexander L. Cummings

Clerk

Court of Appeals of Maryland

I dissent from that part of the Rules Order, entered on the 149th Report of the Rules Committee, adopting recommended changes to Rule 6.1 of the Maryland Rules of Professional Conduct and new Rules 16-901 through 16-903. That part of the order creates what, in my view, is an ill-considered, cumbersome, and probably self-defeating regime for encouraging lawyers throughout the State to contribute more effort, time, and money to assisting persons of limited means to obtain access to legal services. The goal of the proposed rules is unquestionably important and legitimate. My disagreement is entirely over the means chosen to achieve that goal.

The scheme adopted by the Court is (1) to state in the text of Rule 6.1 what is purported to be an "aspirational goal" of every lawyer to devote at least 50 hours a year to "pro bono publico legal service," a "substantial portion" of which should be devoted specifically to certain enumerated types of service, (2) through Rule 16-902, to create pro bono committees in each county to develop local pro bono action plans, (3) through Rule 16-901, to create a State pro bono committee to develop a State pro bono action plan within three years, and (4) through Rule 16-903, to require each of the approximately 27,000 lawyers in the State, to file an annual report with the Administrative Office of the Courts, by January 10 of each year, detailing the specific number of hours the lawyer has devoted to each category of pro bono service prescribed in the rule. Rule 16-903 also sets forth

a procedure for decertifying lawyers who fail to file the report timely. There is no delayed effective date on Rule 16-903, so it would appear that the lawyers will have to begin filing these reports before either the local plans or the State plan have been developed. In my view, this is a wholly unnecessary, coercive, and bureaucratic structure that will not measurably increase truly voluntary pro bono activity and, instead, may well cause lawyers to resent this kind of high-handed imposition and devote their community service efforts elsewhere.

I have both substantive and procedural problems with this scheme. My procedural objection is that this proposal, which affects every lawyer in the State, was largely put together by a small group of like-thinking people behind closed doors, without substantial input from the broad spectrum of the Bar. It was the product of a Commission - the Maryland Judicial Commission on Pro Bono - composed almost entirely of judges (who would be largely exempted from the "aspirational" requirements), a few lawyers from large law firms (whose colleagues, based on the initial recommendation, would have been able to avoid the service requirements by making financial contributions), persons from the pro bono community, and lawyers who, I suspect, were predisposed toward this kind of scheme. There was little representation from the solo and small firm practitioners around the State, and few, if any, of those lawyers were invited to participate in the process.

The scheme proposed by the Commission was submitted to and essentially rejected by this Court's Committee on Standing Rules of Practice and Procedure, which sent to us two alternative proposals. It became clear - undisputably clear - that despite whatever efforts may have been made by the Commission to inform lawyers, after the fact, of what it was proposing, despite some effort by the Maryland State Bar Association to inform its members of approval of the Commission's recommendations by the Association's Board of Governors, and despite publication of the Rules Committee report in the Maryland Register, very few lawyers in the State were aware of the Commission's proposal. We received letters from many of the local and specialty bar associations indicating both their unawareness of and their vehement opposition to the Commission's proposals. It is evident that any effort that may have been made by the Commission to bring the practicing lawyers into the process of developing recommendations was woefully inadequate and ineffective. This is not the way that public policy ought to be formulated.

I do not oppose a judicially-inspired effort to alert lawyers to the demonstrated need that persons of modest means have for pro bono legal services and to encourage them to make greater efforts to help meet that need. I support an effort to identify those needs in each community on a more particular basis and to engage the lawyers in those communities to develop ways and means of addressing those needs. I am convinced that there

are many ways in which lawyers in every field of practice can make, and would be willing on a voluntary basis to make, a measurable contribution.

Rule 6.1 already makes clear that lawyers should render public interest legal service and states that a lawyer may discharge that responsibility (1) by providing professional services at no fee or at reduced fee to persons of limited means or to public service or charitable groups or organizations, or (2) by financial support for organizations that provide legal services to persons of limited means. The comment to the existing rule adds that the provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, as well as the profession generally. The rule and the comment already state the obligation quite well, and they do not need to be cluttered with "aspirational" goals directed at providing services to a more limited class of beneficiaries.

The appropriate term is not "pro bono" but "pro bono publico" - for the good of the public - and, while that certainly includes representing poor people and providing legal service to organizations that represent poor people, it means more than just that. Many lawyers (and judges) prefer to devote time and effort to other forms of public service that are just as important. Many may be less competent or otherwise able to provide direct representation of individuals or organizations and, without some amount of special training or assistance, probably should not

attempt it. Some, including judges and lawyers employed by government agencies, may be unable, for a variety of reasons, to provide that kind of representation, even on a very basic level. Others may feel uncomfortable doing so. It is wrong to adopt a rule of professional responsibility couched in such a way as to denigrate the other kinds of contributions lawyers may legitimately choose to make.

I see some significant problems with the reporting requirement embodied in Rule 16-903. That rule will require upwards of 27,000 lawyers in Maryland to file an annual report with the Administrative Office of the Courts. The way the rules are constructed, these reports will have to be filed beginning in January, 2003, even though the various local and State pro bono plans called for in Rules 16-901 and 16-902 may not be developed for three years or more. I expect that up to half of the lawyers either will forget or decline to file the report in a timely fashion or will send a meaningless report. It is pure wishful thinking to assume that anyone is going to read the reports that are filed. Yet some employee will be charged with receiving them, logging them in, checking them against the list of lawyers who are supposed to file them, sending out a dunning notice to each non-responding lawyer, certifying to the Court a list of defaulters, possibly giving additional notice to the defaulting lawyers (see Rule 16-903(e)(4)), preparing a decertification order listing the names and addresses of the defaulting lawyers,

mailing the decertification order, once signed by the Court, to each defaulting lawyer, filing a formal request that the Court rescind the order as to any lawyer who later files the report, and then sending a copy of the rescission to that lawyer. What an absolute waste of time and money!

Apart from the incredible administrative burden that will be placed on the AOC, why are we so unwilling to trust lawyers to do the right thing? What is the point of requiring these reports now, before the plans are even in effect; what is the rush to create this de-certifying process before we know if it will be needed? It would make far more sense to ask the lawyers in the various communities to develop the local and State pro bono plans first. Those plans, presumably, will identify the specific needs in each county and provide a carefully designed and coordinated array of ways of addressing those needs. If the lawyers in each county are involved in the development of those plans, they can and will take some pride in them. They will have a stake in them and are more likely to see them implemented. A reporting requirement at that point may be helpful in gathering information as to how the plans are being implemented, if the requested information is relevant to the plans and will, in fact be read. The scheme put into place by these rules ignores the carrot altogether and uses only the stick. It is saying to the lawyers of Maryland, "We, the judges, who are exempt from most of these requirements, are setting aspirational goals for you, whether you

like them or not, and demand that each year you tell us precisely (to the hour) how you have met those aspirational goals, and if you fail to do so, you will be de-certified and not allowed to practice." That is what these rules do.

And it is wrong.

Judges Eldridge and Raker have authorized me to state that they join in this dissent.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-124 to add certain provisions concerning service on governmental entities, to delete a certain service requirement pertaining to the Secretary of State, to delete a certain cross reference, to add Committee notes following sections (a) and (k), to add cross references following sections (k) and (l), to revise a certain Committee note, and to make stylistic changes, as follows:

Rule 2-124. PROCESS - PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

~~[(a)]~~ (b) Individual

Service is made upon an individual by serving the individual or an agent authorized by appointment or by law to

receive service of process for the individual.

[(b)] (c) Individual Under Disability

Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

[(c)] (d) Corporation

Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

[(d)] (e) General Partnership

Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, §6-406 by serving any general partner.

[(e)] (f) Limited Partnership

Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other

person expressly or impliedly authorized to receive service of process.

[(f)] (g) Limited Liability Partnership

Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

[(g)] (h) Limited Liability Company

Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

[(h)] (i) Unincorporated Association

Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, §6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

[(i)] (j) State of Maryland

Service is made upon the State of Maryland by serving the Attorney General or an individual designated by the Attorney

General in a writing filed with the [Chief] Clerk of the Court of Appeals [and by serving the Secretary of State]. In any action attacking the validity of an order of an officer or agency of this State not made a party, the officer or agency shall also be served.

[(j)] (k) Officer or Agency of the State of Maryland

[Service is made upon an officer or agency of the State of Maryland, including a government corporation, by serving the officer or agency.]

Service is made on an officer or agency of the State of Maryland by serving (1) the resident agent designated by the officer or agency, or (2) the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Court of Appeals. If service is made on the Attorney General or a designee of the Attorney General and the officer or agency is not ordinarily represented by the Attorney General, the Attorney General or designee promptly shall forward the process and papers to the appropriate officer or agency.

Committee note: This section does not purport to create a tort duty by directing the Attorney General to forward process and papers. See *Erie Ins. Co. v. Chops*, 322 Md. 79 (1991). Nor does this section obviate the need for personal service in accordance with section (b) of this Rule on an officer sued in the officer's individual capacity.

Cross reference: [The Maryland Tort Claims Act, in Code, State Government Article, §12-108 (a), provides that service of a complaint under that statute is sufficient only when made upon the Treasurer of the State.] See Code, State Government Article, §6-109, which requires that a State agency not represented by the Attorney General file with the State Department of Assessments

and Taxation a designation of its resident agent.

(l) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive or presiding officer or, if none, by serving any member of the governing body.

Cross reference: See Code, Article 24, §1-110 concerning a local entity's designation of a resident agent by filing with the State Department of Assessments and Taxation.

[(k)] (m) United States

Service is made upon the United States by serving the United States Attorney for the District of Maryland or an individual designated by the United States Attorney in a writing filed with the clerk of the court and by serving the Attorney General of the United States at Washington, District of Columbia. In any action attacking the validity of an order of an officer or agency of the United States not made a party, the officer or agency shall also be served.

[(l)] (n) Officer or Agency of the United States

Service is made upon an officer or agency of the United States, including a government corporation, by serving the United States and by serving the officer or agency.

[(m)] (o) Substituted Service upon State Department of Assessments and Taxation

Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

[(n)] Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.]

Committee note: [Although this Rule does not preclude service upon a person who is also the plaintiff where the plaintiff enjoys a dual status, the validity of such service in giving notice to the defendant entity is subject to appropriate due process constraints.] If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is derived as follows:

Section [(n)] (a) is new and replaces former Rules 105 c and 106 f.

Section [(a)] (b) is derived from former Rule 104 b 1 (i) and (ii).

Section [(b)] (c) is derived from former Rule 119.

Section [(c)] (d) is derived from former Rule 106 b.

Section [(d)] (e) is new.

Section [(e)] (f) is new.

Section [(f)] (g) is new.

Section [(g)] (h) is new.

Section [(h)] (i) is new.

Section [(i)] (j) is new.

Section [(j)] (k) is new.

Section (l) is new.

Section [(k)] (m) is derived from former Rule 108 a.

Section [(l)] (n) derived from former Rule 108 b.

Section [(m)] (o) is new, but is derived in part from former section (c) and former Rule 106 e 1 and 2.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-510 to add a certain cross reference, as follows:

Rule 2-510. SUBPOENAS

. . .

(d) Service

A subpoena shall be served by delivering a copy either to the person named or to an agent authorized by appointment or by law to receive service for the person named. A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-124 to add certain provisions concerning service on governmental entities, to delete a certain service requirement pertaining to the Secretary of State, to delete a certain cross reference, to add Committee notes following sections (a) and (k), to add cross references following sections (k) and (l), to revise a certain Committee note, and to make stylistic changes, as follows:

Rule 3-124. PROCESS - PERSONS TO BE SERVED

(a) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.

Committee note: Examples of statutes permitting or requiring service on a person include the Maryland Tort Claims Act, Code, State Government Article, §12-108 (a) (service of a complaint is sufficient only when made upon the Treasurer of the State); Code, Insurance Article, §4-107 (service on certain insurance companies is effected by serving the Insurance Commissioner); Code, Business Regulation Article, §6-202 (service on certain nonresident charitable organizations is effected by serving the Secretary of State); and Code, Courts Article, §3-405 (notice to the Attorney General is required immediately after a declaratory judgment action is filed alleging that a statute, municipal or county ordinance, or franchise is unconstitutional).

[(a)] (b) Individual

Service is made upon an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.

[(b)] (c) Individual Under Disability

Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

[(c)] (d) Corporation

Service is made upon a corporation, incorporated association, or joint stock company by serving its resident agent, president, secretary, or treasurer. If the corporation, incorporated association, or joint stock company has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

[(d)] (e) General Partnership

Service made upon a general partnership sued in its group name in an action pursuant to Code, Courts Article, §6-406 by serving any general partner.

[(e)] (f) Limited Partnership

Service is made upon a limited partnership by serving its resident agent. If the limited partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any general partner or other person expressly or impliedly authorized to receive service of process.

[(f)] (g) Limited Liability Partnership

Service is made upon a limited liability partnership by serving its resident agent. If the limited liability partnership has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any other person expressly or impliedly authorized to receive service of process.

[(g)] (h) Limited Liability Company

Service is made upon a limited liability company by serving its resident agent. If the limited liability company has no resident agent or if a good faith attempt to serve the resident agent has failed, service may be made upon any member or other person expressly or impliedly authorized to receive service of process.

[(h)] (i) Unincorporated Association

Service is made upon an unincorporated association sued in its group name pursuant to Code, Courts Article, §6-406 by serving any officer or member of its governing board. If there are no officers or if the association has no governing board, service may be made upon any member of the association.

[(i)] (j) State of Maryland

Service is made upon the State of Maryland by serving the Attorney General or an individual designated by the Attorney General in a writing filed with the [Chief] Clerk of the Court of Appeals [and by serving the Secretary of State]. In any action attacking the validity of an order of an officer or agency of this State not made a party, the officer or agency shall also be served.

[(j)] (k) Officer or Agency of the State of Maryland

[Service is made upon an officer or agency of the State of Maryland, including a government corporation, by serving the officer or agency.]

Service is made on an officer or agency of the State of Maryland by serving (1) the resident agent designated by the officer or agency, or (2) the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Court of Appeals. If service is made on the Attorney General or a designee of the Attorney General and the officer or agency is not ordinarily represented by the Attorney General, the Attorney General or designee promptly shall forward the process and papers to the appropriate officer or agency.

Committee note: This section does not purport to create a tort duty by directing the Attorney General to forward process and papers. See *Erie Ins. Co. v. Chops*, 322 Md. 79 (1991). Nor does this section obviate the need for personal service in accordance with section (b) of this Rule on an officer sued in the officer's individual capacity.

Cross reference: [The Maryland Tort Claims Act, in Code, State Government Article, §12-108 (a), provides that service of a complaint under that statute is sufficient only when made upon the Treasurer of the State.] See Code, State Government Article, §6-109, which requires that a State agency not represented by the Attorney General file with the State Department of Assessments and Taxation a designation of its resident agent.

(1) Local Entity

Service is made on a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of the State by serving the resident agent designated by the local entity. If the local entity has no resident agent

or if a good faith effort to serve the resident agent has failed, service may be made by serving the chief executive or presiding officer or, if there is no chief executive or presiding officer, by serving any member of the governing body.

Cross reference: See Code, Article 24, §1-110 concerning a local entity's designation of a resident agent by filing with the State Department of Assessments and Taxation.

[(k)] (m) United States

Service is made upon the United States by serving the United States Attorney for the District of Maryland or an individual designated by the United States Attorney in a writing filed with the clerk of the court and by serving the Attorney General of the United States at Washington, District of Columbia. In any action attacking the validity of an order of an officer or agency of the United States not made a party, the officer or agency shall also be served.

[(l)] (n) Officer or Agency of the United States

Service is made upon an officer or agency of the United States, including a government corporation, by serving the United States and by serving the officer or agency.

[(m)] (o) Substituted Service upon State Department of Assessments and Taxation

Service may be made upon a corporation, limited partnership, limited liability partnership, limited liability company, or other entity required by statute of this State to have a resident agent by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon the State Department of Assessments and

Taxation if (i) the entity has no resident agent; (ii) the resident agent is dead or is no longer at the address for service of process maintained with the State Department of Assessments and Taxation; or (iii) two good faith attempts on separate days to serve the resident agent have failed.

[(n) Statutes Not Abrogated

The provisions of this Rule do not abrogate any statute permitting or requiring service on a person.]

Committee note: [Although this Rule does not preclude service upon a person who is also the plaintiff where the plaintiff enjoys a dual status, the validity of such service in giving notice to the defendant entity is subject to appropriate due process constraints.] If a person served pursuant to this Rule is a plaintiff as well as a person upon whom service on a defendant entity is authorized by the Rule, the validity of service on the plaintiff to give notice to the defendant entity is subject to appropriate due process constraints.

Source: This Rule is derived as follows:

Section [(n)] (a) is new and replaces former M.D.R. 106 f.

Section [(a)] (b) is derived from former M.D.R. 104 b 1 (i) and (ii).

Section [(b)] (c) is derived from former M.D.R. 119.

Section [(c)] (d) is derived from former M.D.R. 106 b.

Section [(d)] (e) is new.

Section [(e)] (f) is new.

Section [(f)] (g) is new.

Section [(g)] (h) is new.

Section [(h)] (i) is new.

Section [(i)] (j) is new.

Section [(j)] (k) is new.

Section (l) is new.

Section [(k)] (m) is derived from former Rule 108 a.

Section [(l)] (n) is derived from former Rule 108 b.

Section [(m)] (o) is new, but is derived in part from former section (c) and former M.D.R. 106 e 1 and 2.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 500 - TRIAL

AMEND Rule 3-510 to add a certain cross reference, as follows:

Rule 3-510. SUBPOENAS

. . .

(d) Service

A subpoena shall be served by delivering a copy either to the person named or to an agent authorized by appointment or by law to receive service for the person named. A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-266 to add a certain cross reference, as follows:

Rule 4-266. SUBPOENAS -- GENERALLY

. . .

(b) Service

A subpoena shall be served by delivering a copy either to the person named or to an agent authorized by appointment or by law to receive service for the person named. A subpoena may be served by a sheriff of any county or by a person who is not a party and who is not less than 18 years of age, and in the District Court, if the administrative judge of the district so directs, by mail.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 900 - PRO BONO LEGAL SERVICE

Rule 16-901. STATE PRO BONO COMMITTEE AND PLAN

- (a) Standing Committee on Pro Bono Legal Service
 - (1) Creation
 - (2) Members
 - (3) Terms; Chair
 - (4) Consultants
- (b) Duties of the Standing Committee
- (c) State Pro Bono Action Plan
 - (1) Generally
 - (2) Contents
- (d) Publication
- (e) Consideration by the Court of Appeals

Rule 16-902. LOCAL PRO BONO COMMITTEES AND PLANS

- (a) Local Pro Bono Committees
 - (1) Creation
 - (2) Members
 - (3) Chair
 - (4) Consultants
- (b) Duties of the Committee
- (c) Local Pro Bono Action Plans
 - (1) Generally
 - (2) Contents

Rule 16-903. REPORTING PRO BONO LEGAL SERVICE

- (a) Required as a Condition of Practice
- (b) Designated Employee of the Administrative Office of the Courts
- (c) Mailing by the Administrative Office of the Courts
- (d) Due Date
- (e) Enforcement
 - (1) Notice of Default
 - (2) Additional Discretionary Notice of Default
 - (3) List of Defaulting Lawyers
 - (4) Certification of Default; Order of Decertification

- (5) Mailing of Decertification Order
- (6) Rescission
- (7) Notices to Clerks
- (f) Certain Information Furnished to the Standing Committee
on Pro Bono Legal Service
- (g) Confidentiality

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 900 - PRO BONO LEGAL SERVICE

ADD new Rule 16-901, as follows:

Rule 16-901. STATE PRO BONO COMMITTEE AND PLAN

(a) Standing Committee on Pro Bono Legal Service

(1) Creation

There is a Standing Committee of the Court of Appeals on Pro Bono Legal Service.

(2) Members

The Standing Committee consists of 13 members appointed by the Court of Appeals, as follows:

(A) eight members of the Maryland Bar, including one from each appellate judicial circuit and one selected from the State at large;

(B) a circuit court judge selected from among at least three nominees submitted by the Conference of Circuit Judges;

(C) a District Court judge selected from at least three nominees submitted by the Chief Judge of the District Court;

(D) the Public Defender or a designee of the Public Defender;

(E) a representative from a legal services provider organization who does not serve on a Local Pro Bono Committee;

and

(F) a member of the general public.

(3) Terms; Chair

The Court of Appeals shall fix the terms of the members and designate one of the members as the chair.

(4) Consultants

The Standing Committee may designate a reasonable number of consultants from among court personnel or representatives of other organizations or agencies concerned with the provision of legal services to persons of limited means.

(b) Duties of the Standing Committee

The Standing Committee shall:

(1) develop standard forms for use by the Local Pro Bono Committees in developing and articulating the Local Pro Bono Action Plans and making their annual reports;

(2) recommend uniform standards for use by the Local Pro Bono Committees to assess the need for pro bono legal services in their communities;

(3) review and evaluate the Local Pro Bono Action Plans and the annual reports of the Local Pro Bono Committees;

(4) collect and make available to Local Pro Bono Committees information about pro bono projects;

(5) at the request of a Local Pro Bono Committee, provide guidance about the Rules in this Chapter and Rule 6.1 of the Maryland Lawyers' Rules of Professional Conduct;

(6) file with the Court of Appeals an annual report and recommendations about the implementation and effectiveness of the Local Pro Bono Action Plans, the Rules in this Chapter, and Rule 6.1 of the Maryland Lawyers' Rules of Professional Conduct; and

(7) prepare a State Pro Bono Action Plan as provided in section (c) of this Rule.

(c) State Pro Bono Action Plan

(1) Generally

Within three years after the effective date of this Rule, the Standing Committee shall submit to the Court of Appeals a State Pro Bono Action Plan to promote increased efforts on the part of lawyers to provide legal assistance to persons of limited means. In developing the Plan, the Standing Committee shall:

(A) review and assess the results of the Local Pro Bono Action Plans;

(B) assess the data generated by the reports required by Rule 16-903;

(C) gather and consider information pertinent to the existence, nature, and extent of the need for pro bono legal services in Maryland; and

(D) provide the opportunity for one or more public hearings.

(2) Contents

The State Pro Bono Action Plan may include a recommendation for increasing or decreasing the aspirational

goals for pro bono publico legal service set forth in Rule 6.1 of the Maryland Lawyers' Rules of Professional Conduct. The Plan should include suggestions for the kinds of pro bono activities that will be most helpful in meeting the need for pro bono legal service throughout the State and should address long-range pro bono service issues.

Committee note: Examples of long-range issues that may be addressed include opportunities for transactional lawyers, government lawyers, business lawyers, and in-house counsel to render pro bono legal service; opportunities for pro bono legal service by lawyers who are unable to provide direct client representation; "collective responsibility" for pro bono legal service when a law firm designates certain lawyers to handle only pro bono matters; and encouraging pro bono legal service among law students and in the legal academic setting.

(d) Publication

The Clerk of the Court of Appeals shall cause the State Action Plan submitted by the Standing Committee to be published in the Maryland Register and such other publications as the Court directs and shall establish a reasonable period for public comment.

(e) Consideration by the Court of Appeals

After the comment period, the Court of Appeals shall hold a public hearing and take appropriate action on the Plan.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 900 - PRO BONO LEGAL SERVICE

ADD new Rule 16-902, as follows:

Rule 16-902. LOCAL PRO BONO COMMITTEES AND PLANS

(a) Local Pro Bono Committees

(1) Creation

There is a Local Pro Bono Committee for each county.

(2) Members

(A) The Local Pro Bono Committee consists of no more than 11 members, as follows:

(i) the District Public Defender for the county or an assistant public defender selected by the District Public Defender;

(ii) at least three but no more than five lawyers, appointed by the president of the county bar association, who practice in the county and at least one of whom is an officer of the county bar association;

(iii) at least two but no more than three representatives nominated by legal services organizations and pro bono referral organizations that provide services in the county and selected by the County Administrative Judge and the District Administrative Judge; and

(iv) at least one but no more than two persons from the

general public, appointed jointly by the County Administrative Judge and the District Administrative Judge.

(3) Chair

The Committee shall elect a member to serve as chair.

(4) Consultants

The Committee may designate a reasonable number of consultants from among court personnel or representatives of other organizations or agencies concerned with the provision of legal services to persons of limited means.

(b) Duties of the Committee

The Local Pro Bono Committee shall:

(1) assess the needs in the county for pro bono legal service, including the needs of non-English speaking, minority, and isolated populations;

(2) determine the nature and extent of existing and proposed free or low-cost legal services, both staff and volunteer, for persons of limited means in the county;

(3) establish goals and priorities for pro bono legal service in the county;

(4) prepare a Local Pro Bono Action Plan as provided in section (c) of this Rule;

(5) in accordance with the policies and directives established by the Standing Committee or the Court of Appeals, implement or monitor the implementation of the Plan; and

(6) submit an annual report about the Plan to the Standing

Committee.

(c) Local Pro Bono Action Plans

(1) Generally

The Local Pro Bono Committee shall develop, in coordination with existing legal services organizations and pro bono referral organizations that provide services in the county, a detailed Local Pro Bono Action Plan to promote pro bono legal service to meet the needs of persons of limited means in the county. The Plan shall be submitted to the Standing Committee within one year after creation of the Local Committee. With the approval of the Standing Committee, a single joint Pro Bono Action Plan may be developed for two or more adjoining counties, by collaboration of the Local Pro Bono Committees.

(2) Contents

The Local Pro Bono Action Plan shall address the following matters:

(A) screening applicants for pro bono representation and referring them to appropriate referral sources or panels of participating attorneys;

(B) establishing or expanding attorney referral panels;

(C) continuing and supporting current services provided by existing pro bono and legal services organizations;

(D) a procedure for matching cases with individual attorney expertise, including specialized panels;

(E) support for participating attorneys, including

(i) providing litigation resources and out-of-pocket expenses for pro bono cases;

(ii) providing or supplementing legal malpractice insurance for participating attorneys;

(iii) providing legal education and training for participating attorneys in specialized areas of the law relevant to pro bono legal service, including consultation services with attorneys who have expertise in areas of law in which participating attorneys seek to provide pro bono service; and

(iv) recommending court scheduling and docketing preferences for pro bono cases;

(F) methods of informing lawyers about the ways in which they may provide pro bono legal service;

Committee note: Ways in which lawyers may provide pro bono legal service include assisting in the screening and intake process; interviewing prospective clients and providing basic consultation; participating in pro se clinics or other programs in which lawyers provide advice and counsel, assist persons in drafting letters or documents, or assist persons in planning transactions or resolving disputes without the need for litigation; representing clients through case referral; acting as co-counsel with legal service providers or other participating attorneys; providing consultation to legal service providers for case reviews and evaluations; training or consulting with other participating attorneys or staff attorneys affiliated with a legal service provider; engaging in legal research and writing; and, if qualified through training and experience, serving as a mediator, arbitrator, or neutral evaluator.

(G) coordinating implementation of the Plan with the courts, county bar associations, and other agencies and organizations;

(H) the number of hours of pro bono legal services needed

annually to meet the needs of persons of limited means in the county; and

(I) programs to recognize lawyers who provide pro bono legal services.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 900 - PRO BONO LEGAL SERVICE

ADD new Rule 16-903, as follows:

Rule 16-903. REPORTING PRO BONO LEGAL SERVICE

(a) Required as a Condition of Practice

As a condition precedent to the practice of law, each lawyer authorized to practice law in Maryland shall file annually with the Administrative Office of the Courts a Pro Bono Legal Service Report on a form approved by the Court of Appeals. The form shall not require the identification of pro bono clients.

Committee note: The purpose of pro bono legal service reporting is to document the pro bono legal service performed by lawyers in Maryland and determine the effectiveness of the Local Pro Bono Action Plans, the State Pro Bono Action Plan, the Rules in this Chapter, and Rule 6.1 of the Maryland Lawyers' Rules of Professional Conduct.

(b) Designated Employee of the Administrative Office of the Courts

The Court of Appeals shall designate an employee of the Administrative Office of the Courts to oversee the reporting process set forth in this Rule.

(c) Mailing by the Administrative Office of the Courts

On or before January 10 of each year, the Administrative Office of the Courts shall mail a Pro Bono Legal Service Report form to each lawyer on the list maintained by the Clients'

Security Trust Fund. The addresses on that list shall be used for all notices and correspondence pertaining to the reports.

(d) Due Date

Pro Bono Legal Service Reports for a given calendar year shall be filed with the Administrative Office of the Courts on or before February 15 of the following calendar year.

(e) Enforcement

(1) Notice of Default

As soon as practicable after May 1 of each year, the Administrative Office of the Courts shall give notice of the failure to file a report to each defaulting lawyer. The notice shall (A) state that the lawyer has not filed the Pro Bono Legal Service Report for the previous calendar year, (B) state that continued failure to file the Report may result in the entry of an order by the Court of Appeals prohibiting the lawyer from practicing law in the State, and (C) be sent by first class mail. The mailing of the notice of default shall constitute service.

(2) Additional Discretionary Notice of Default

In addition to the mailed notice, the Administrative Office of the Courts may give additional notice to defaulting lawyers by any of the means enumerated in Rule 16-811 g 3.

(3) List of Defaulting Lawyers

As soon as practicable after July 1 of each year but no later than August 1, the Administrative Office of the Courts shall prepare, certify, and file with the Court of Appeals a list

that includes the name and address of each lawyer engaged in the practice of law who has failed to file the Pro Bono Legal Service Report for the previous year.

(4) Certification of Default; Order of Decertification

The Administrative Office of the Courts shall submit with the list a proposed Decertification Order stating the names and addresses of those lawyers who have failed to file their Pro Bono Legal Service Reports for the specified calendar year. At the request of the Court of Appeals, the Administrative Office of the Courts also shall furnish additional information from its records or give further notice to the defaulting lawyers. If satisfied that the Administrative Office of the Courts has given the required notice to each lawyer named on the proposed Decertification Order, the Court of Appeals shall enter a Decertification Order prohibiting each of them from practicing law in the State.

(5) Mailing of Decertification Order

The Administrative Office of the Courts shall mail by first class mail a copy of the Decertification Order to each lawyer named in the Order. The mailing of the copy of the Decertification Order shall constitute service.

(6) Rescission

If a lawyer files the outstanding Pro Bono Legal Service Report, the Administrative Office of the Courts shall request the Court of Appeals to enter an order rescinding its Decertification

Order as to that lawyer. Upon entry of a Rescission Order, the Administrative Office of the Courts promptly shall furnish confirmation to the lawyer.

(7) Notices to Clerks

The Clerk of the Court of Appeals shall send a copy of each Decertification Order and Rescission Order entered pursuant to this Rule to the Clerk of the Court of Special Appeals, the Clerk of each circuit court, the Chief Clerk of the District Court, and the Register of Wills for each county.

(f) Certain Information Furnished to the Standing Committee on Pro Bono Legal Service

The Administrative Office of the Courts shall submit promptly to the Standing Committee on Pro Bono Legal Service a compilation of non-identifying information and data from the Pro Bono Legal Service Reports.

(g) Confidentiality

Pro Bono Legal Service Reports are confidential and are not subject to inspection or disclosure under Code, State Government Article, §10-615 (2)(iii). The Administrative Office of the Courts shall not release the Reports to any person or agency, except upon order of the Court of Appeals. Non-identifying information and data contained in a lawyer's Pro Bono Legal Service Report are not confidential.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
APPENDIX: RULES OF PROFESSIONAL CONDUCT
PUBLIC SERVICE

AMEND Rule 6.1 to add certain provisions concerning aspirational goals for pro bono publico legal service, to state that the rule is aspirational and not mandatory, to provide that noncompliance with the Rule is not grounds for disciplinary action or other sanctions, to add certain commentary concerning the aspirational goals, and to make certain stylistic changes, as follows:

Rule 6.1. Pro Bono Publico Legal Service

(a) Professional Responsibility

A lawyer [should render public interest] has a professional responsibility to render pro bono publico legal service. [A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, or by financial support for organizations that provide legal services to persons of limited means.]

(b) Discharge of Professional Responsibility

A lawyer in the full-time practice of law should aspire to

render at least 50 hours per year of pro bono publico legal service, and a lawyer in part-time practice should aspire to render at least a pro rata number of hours.

(1) Unless a lawyer is prohibited by law from rendering the legal services described below, a substantial portion of the applicable hours should be devoted to rendering legal service, without fee or expectation of fee, or at a substantially reduced fee, to:

(A) people of limited means;

(B) charitable, religious, civic, community, governmental, or educational organizations in matters designed primarily to address the needs of people of limited means;

(C) individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; or

(D) charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes when the payment of the standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate.

(2) The remainder of the applicable hours may be devoted to activities for improving the law, the legal system, or the legal profession.

(3) A lawyer also may discharge the professional responsibility set forth in this Rule by contributing financial support to organizations that provide legal services to persons

of limited means.

(c) Effect of Noncompliance

This Rule is aspirational, not mandatory. Noncompliance with this Rule shall not be grounds for disciplinary action or other sanctions.

COMMENT

The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation, and the administration of justice. This Rule expresses that policy but is not intended to be enforced through the disciplinary process.

The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules, and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession, the government, and the courts to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and [others] more will be developed by the profession, the government, and the courts. Every lawyer should support all proper efforts to meet this need for legal services.

The goal of 50 hours per year for pro bono legal service established in paragraph (b) of this Rule is aspirational; it is a goal, not a requirement. The number used is intended as an

average yearly amount over the course of the lawyer's career.

A lawyer in government service who is prohibited by constitutional, statutory, or regulatory restrictions from performing the pro bono legal services described in paragraph (b)(1) of the Rule may discharge the lawyer's responsibility by participating in activities described in paragraph (b)(2).

Code Comparison.-- There is no counterpart of Rule 6.1 in the Disciplinary Rules of the Code. EC 2-25 states that "The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged." EC 8-9 states that "The advancement of our legal system is of vital importance in maintaining the rule of law ... and lawyers should encourage, and should aid in making needed changes and improvements." EC 8-3 states that "Those persons unable to pay for legal services should be provided needed services."